THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :23766 of 2007

DATED:12-11-2007

BETWEEN:

Chennuboina Malyadri & another.

..... PETITIONERS

AND

The Tahsildar,
Kondapuram mandal,
Krishna District & another.

.....RESPONDENTS

_
_
_
_
_
_

ORDER:

Heard learned counsel appearing for the petitioners as well as the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioners seek a writ of mandamus declaring the notice, dated 18-08-2007, issued by the 1st respondent to petitioners during the first week of September, 2007 directing them to deliver possession of the land measuring 19.40 cents in S.No.692-1, 692-2, 691-2, 693-2, 690, 681, 680, 695-2, 704, 702, 701, 697/3, 697/6, 699/1, 699/2, 698/2 situated at Chinthaladevi village, Kondapur mandal, Nellore District within a week and in default thereof, threatening to evict the petitioners without following due process of law, as illegal and arbitrary.

3. Both the petitioners are the sons of one Kondaiah. It is stated that they are in continuous possession and enjoyment of 19.40 cents of the lands situated at Chinthaladevi village, Kondapur mandal, and the said lands, admittedly, belong to the Government but the petitioners are in longstanding possession. While so, the 1st respondent-Tahsildar, Kondapur mandal, issued a notice in Rc.B.No.230/05, dated
18-08-2007, informing the petitioners that they have encroached the said extent of 19.40 cents of lands in various survey numbers and accordingly, petitioners are directed to vacate the encroached land, otherwise appropriate action will be taken. It is further stated

that the said notice has been issued pursuant to the order of the Government in G.O.Ms.No.2398 Revenue, Assn-II Department, dated
14-12-2005, and also the order of the Collector, dated
01-08-2007.

4. It is the case of the petitioners that as the said lands are the Government lands and there is no dispute with regard to the encroachment of the petitioners over the said lands. If that be so, it is not open for the 1st respondent to pass the eviction orders straightaway without issuing any notice under
Section 7 of the A.P.Land Encroachment Act, 1905 (for brevity, 'the Act'). The said legal contention has not been disputed by the learned Government Pleader. I am also of the opinion that without following the principles of natural justice, it may not be just and proper to dispossess the encroachers.

5. Having regard to the facts and circumstances of the case, the impugned notice, dated 18-08-2007, is to be treated as a notice under Section 7 of the Act, and the petitioners are permitted to submit explanation within ten days from today. If any such explanation is submitted, until the orders are passed under Section 6 of the Act, *status quo* obtaining as on today with regard to possession of the said lands shall be maintained.

6. Accordingly, Writ Petition is disposed of as indicated above. There shall be no order as to costs.

_____

V.ESWARAIAH,J

12th November, 2007.

Note:

Issue operative portion of the order
by wire at party's costs.

B/o
Tsy